

Telesat strongly disagrees with MCT's assertion as to an "inextricable link" between transmission and content. Indeed, different service providers are involved in each of these functions — the transmission or carriage component is provided by the underlying satellite facility provider, whereas the content is provided by the broadcaster or the programming service provider. Where such a clear distinction exists, there is simply no need to muddy up an ECO-Sat analysis with any concerns relating to another country's broadcasting or cultural policies. As long as the home country satellite facility provider and the competing foreign satellite facility provider face the same content or broadcasting policy restrictions as to what each can carry in this particular home market, there is no difference in the opportunity set facing either facility provider on account of these restrictions. Under these conditions, no ECO-Sat concerns, in terms of unfair or unequal treatment of domestic and foreign competitors, come into play.

At page 8 in their joint comments, DIRECTV, DIRECTV INTERNATIONAL and Hughes express similar concerns about countries that "discriminate against U.S. and other foreign satellite operators by imposing protectionist barriers or otherwise creating sanctuary markets to preserve native industries from competition". Express mention is made of the Canadian DTH service market in this regard. As noted above, however, in the case of an ECO-Sat analysis there is no need to mix a country's content or cultural policies in with matters which rightfully can be restricted to carriage or facilities competition issues. In this regard, it is interesting to note Hughes' further comment at page 17 of their submission on content restrictions:

"the mere existence of content barriers in the home or route markets served by a foreign-licensed satellite should not automatically bar that satellite from serving the U.S. Indeed, if that were the law, almost no foreign-licensed satellite ever could satisfy the ECO-Sat test, because virtually every country,

including the United States, has content restrictions of some kind to serve the particular country's legitimate public interest needs."

In the case of country-specific requirements imposed on service providers, even if these requirements or obligations differ between the U.S. and the foreign satellite operator's domestic market, as long as the same "home market" requirements generally apply to all competitors in the foreign operator's market, no ECO-Sat concerns should arise, as all competitors would be similarly impacted by these requirements, and the opportunity exists for all competitors to receive "national" treatment. Indeed, fair treatment of competitors under an ECO-Sat type of analysis would require that any "home market" requirement or condition imposed on the domestic facility operator should also generally apply to any foreign satellite operator wishing to serve that same market. With respect to the United States, this would mean that a foreign satellite facility provider would generally be required to comply with the same FCC and U.S. government rules imposed on a U.S. satellite facility provider. Similarly in the Canadian market, Canadian regulatory and government rules would apply to all satellite facility providers. Failure to require the same restrictions to generally apply to all satellite facility operators in the same market would be unfair, and likely distort the competitive process and otherwise impose significant costs or marketing disadvantages on some competitors but not others.

In sum, if the foreign competitor's "home market" is open to a U.S. satellite service facility operator, and if the equivalent "home rules" apply to all competitors in that market, then the domestic and U.S. operators would face equivalent competitive opportunities in that market and the ECO-Sat test would be satisfied. To go the other route and require that the same regulatory or policy framework must exist in the two countries could easily create too high a hurdle for an ECO-Sat test, with the consequence

that domestic markets will stay closed to foreign satellite facility operators and the hoped for benefits of increased competition not allowed to materialize.

6. There should be no retroactive application of an ECO-Sat framework.

In the NPRM the Commission tentatively concluded that it should not apply the policy that is ultimately adopted in this proceeding retroactively to review existing licenses and authorizations or to pending requests or applications properly filed before the date of adoption of the Notice. (NPRM ¶ 20)

Telesat notes that most parties agreed that the Commission should not apply any new policy ultimately adopted in this proceeding retroactively to review existing licenses and authorizations. Telesat supports this position. As the Commission suggests, in cases where a license or authorization has already been granted, the potential disruption in service and the uncertainty likely caused by such a review would almost certainly outweigh any benefits that may result. Indeed, through no fault of their own, and regardless of the final outcome of any such review process, a license holder's business could be irreparably harmed from the uncertainty alone.

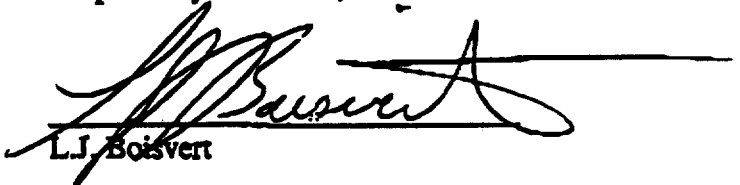
Telesat further notes that a number of parties, including Worldcom, National Telecom Satellite Communications, and GE Americom, similarly opposed the retroactive application of any new rules to any application filed before those new rules are finalized and formally adopted by the Commission. Given that it is not certain what the final rules will be or when they will ultimately be adopted, Telesat strongly disagrees with retroactive application of the proposed new policies.

Indeed, it was also suggested that this whole proceeding is premature and should be postponed until after the WTO/GATS negotiations are completed next year (see for example the submissions of Loral and AirTouch). Still others have suggested that a further NPRM outlining more specific rules should be issued (Charter Communications, Transworld Communications). Should the Commission find merit in either of these proposals, it would be sometime before final rules would be known. Under these circumstances, the only fair course for the Commission to take would be to continue to consider applications under the existing rules.

III. CONCLUSION

Telesat is generally supportive of the objectives of the Commission's proposed ECO-Sat framework, namely increasing facilities competition in North America, but believes that the proposal must take into consideration the additional factors outlined in this reply. In Telesat's view, the practical implementation of that framework to achieve regional satellite facilities competition will require smaller satellite fleet operators like Telesat to refit and refocus their operations so as to become viable participants in the larger market context contemplated within this proceeding. The Commission's proposed incremental ECO-Sat approach which would focus on broad service categories or type of satellite facility (FSS, MSS, DTH/DBS) is conducive to allowing for this necessary transition. Furthermore, if the framework is to be implemented in fairly short order, it will also require that "home market" rules, equitably applied to all satellite facility providers, form the basis of the ECO-Sat test. Any other approach will likely work against the Commission's stated objectives in this proceeding "to enhance effective competition in the global market for communications services while preventing anti-competitive conduct in the provision of satellite services and encouraging foreign governments to open their communications markets." (NPRM ¶ 81)

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 16, 1996, a copy of the foregoing Reply Comments of Telesat Canada was delivered, By first-class mail postage pre-paid, or By hand delivery (as indicated by an asterisk) to the following:

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